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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,880	07/03/2003	Henryk P. Jakubowski		7231

7590 10/20/2005
HENRYK P. JAKUBOWSKI
65-10 108th ST. APT. 5H
FOREST HILLS, NY 11375

EXAMINER

SAFAVI, MICHAEL

ART UNIT PAPER NUMBER

3673

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/613,880	Applicant(s) JAKUBOWSKI, HENRYK P.	
	Examiner M. Safavi	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Specification

The substitute portions of the specification, including the Abstract, filed May 27, 2005 has not been entered because it does not conform to 37 CFR 1.121(b) and (c) because: The substitute sections appear to present new matter.

The disclosure as originally filed does not find support for "self-inflatable" or "*cut out* with accordion style sides *at the bottom of the gas pillow*" or "pulling apart bottom and top panel will result in self-inflation" or self-inflate air pillow" or "cut out at the bottom of the air bag" or "cut out at the bottom of the air pillow", (abstract).

Further, 37 CFR 1.121(b)(2)(i) & (ii) requires:

Amendments to the specification, other than the claims, may be made by submitting:

(i) A reference to the section heading along with an instruction, which unambiguously identifies the location, to delete that section of the specification and to replace such deleted section with a replacement section; and;

(ii) A replacement section with markings to show all changes relative to the previous version of the section. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double

brackets if strike-through cannot be easily perceived.

The use of the trademark Velcro has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "lanyard" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification had not originally disclosed, "*cut out with accordion style sides at the bottom of the gas pillow*" as is now presented within amended **claims 1 and 18**. The specification had not originally disclosed, "*cut out at the bottom of the gas pillow*" as is now presented within amended **claims 22 and 23**. The specification had not originally disclosed "*will self-inflate by pulling [a]part bottom and top parts of the air bag*" as is now presented within amended **claim 24**.

Further, it is not clear as to what is being defined by claims 1-24. Nor is it clear from the specification as to what is being defined. For example, the specification is not clear and complete as to any specific shape of the pillow. The drawing figures appear to

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show only a schematic depiction of the pillow. Page 17 of the specification recites, "Bathtub constructions F (see Fig. 2 and Fig. 3) is designed to minimize amount of the air needed to inflate the travel pillow to desired dimensions and shape." However, there appears no specific description of the shape of the pillow. In other words, what is a "bathtub construction"? Lines 4-6 of page 17 recite, " By having accordion sides (see Fig.3) user will be able to adjust the height and angles of the air pillow to his or her preferences by shortening or lengthening all or some of above-mentioned Velcro straps." However, the specification is not clear and the drawings do not show how such straps would serve to "adjust the height and angles of the air pillow". How, for example, do "shortening straps C and D" adjust the angle of the foot support? Fig. 4 does not show this and the specification does not clearly and completely describe such. Fig. 4 appears to present nothing more than a box figure. And, How do "straps A, B, C, D" adjust the height or angle of the foot support? Figs. 1, 2, 4, 5, 5a, 6, 7, and 10-13 do not show this and the specification does not clearly and completely describe such. Figs. 1, 2, 4, 5, 5a, 6, and 7 appear to present respectively nothing more than a box figure while Figs. 3 and 10-13 appear as schematic drawings. No details appear whatsoever in the drawing figures.

Another example of the ambiguity within the instant disclosure is the recitation at lines 11-12 on page 18 of the specification to, "could be accomplished by looping and fastening part a of the strap (see Fig.9) around the attachment and fastening and looping part b. around the foot to desired comfort." How is "part a" looped and fastened "around the attachment"? What is "the attachment"?

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-24 variously recite "Velcro" when it is not clear as to what "Velcro" serves to define with respect to the claimed invention. The word Velcro appears as a name which does not characterize the claimed invention or any parts thereof.

Claim 1, line 4, are the "accordion style side walls" the same as that introduced at line 2? Or, does claim 1 present two different accordion side walls? Line 4, "the air bag" lacks an appropriate antecedent within the claim. It is therefore not clear as to what "the air bag" refers.

Claim 3, to what does "adjustable seating surface" refer? Is an "adjustable seating surface" part of the claimed pillow?

Claim 4, line 2, "the bag" lacks an appropriate antecedent within the claim. It is therefore not clear as to what "the bag" refers.

Claim 5, line 2, "the bag" lacks an appropriate antecedent within the claim. It is therefore not clear as to what "the bag" refers.

Claim 7, line 2, "the bag" lacks an appropriate antecedent within the claim. It is therefore not clear as to what "the bag" refers.

Claim 8, line 2, "the bag" lacks an appropriate antecedent within the claim. It is therefore not clear as to what "the bag" refers.

Claim 6, line 2, "the foot rest" lacks an appropriate antecedent within the claim. It is therefore not clear as to what "the foot rest" refers.

Claim 9, to what does "employed Velcro straps" refer? Are these Velcro straps part of the claimed pillow?

Each of claims 10-17 recite "Velcro strap" and proceed to recite language that appears to modify, or further define, the recited Velcro strap. However, it is not clear as to whether or not the modifications recited within each of claims 10-17 are being positively claimed as part of the claimed pillow or if the modifications recited within each of claims 10-17 are merely directed to a possible use or arrangement.

Claim 12, line 3, to what does "other part of the strap" refer?

Claim 17, line 2, "the loop" lacks an appropriate antecedent within the claim. It is therefore not clear as to what "the loop" refers.

It is not clear as to what is being defined by the language of claim 22. Claim 22 presents multiple sentences. Each claim begins with a capital letter and ends with a period. Periods may not be used elsewhere in the claims except for abbreviations. See *Fressola v. Manbeck*, 36 USPQ2d 1211 (D.D.C. 1995); M.P.E.P. 608.01(m).

Claim 22, line 2, "the air bag" lacks an appropriate antecedent within the claim. It is therefore not clear as to what "the air bag" refers. And, to what does "cut out at the bottom of the air bag donut or torus design" refer? The specification does not appear to clearly describe a "cut out at the bottom of the air bag donut or torus design".

It is not clear as to what is being defined by the language of claim 23. The recitation to, "cut out at the bottom of the air bag will be eliminated in economy

configuration" appears to delete a limitation set forth in parent claim 1 from which claim 23 depends. Or, is claim 23 directed to a possible configuration? To this end, it appears that each of dependent claims 2-24 present nothing more than possible configurations or arrangements.

Claim 23, line 3, "the features" lacks an appropriate antecedent within the claim. It is therefore not clear as to what "the features" refers.

The language presented within each of claims 1-24 is not clear as the specification does not appear to clearly describe the features recited within each of claims 1-24, (see above rejection of claims 1-24 under U.S.C. 112, first paragraph.

Claim 1-24 contains the trademark/trade name Velcro. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe hook and loop attachment means and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Champagne '449 in view of Carter '848.

Champagne '449 discloses, Figs. 2, 3, and 6, an inflatable pillow having "accordion type" side walls 10/24 with a "cut out" at 21 or 22 or that "cut out" between 11 and 12. Champagne '449 does not specifically disclose use of hook and loop straps nor a "lanyard".

However, Carter '848 teaches utilization of both hook and loop straps 34 and a "lanyard" 30 attached to a pillow. Therefore, to have provided the inflatable pillow of Champagne '449 with both hook and loop straps and a "lanyard", thus allowing attachment of the pillow to any given object, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Carter '848.

Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stamberger '113 in view of Carter '848.

Stamberger '113 discloses, Figs. 1, 3, 5, and 10, an inflatable pillow 10 having "accordion type" side walls 26, 40 with a "cut out" at crease of 26 or 40 or that "cut out"

on either side of 11/12 towards 13a. A "lanyard" is at 19. Stamberger '113 does not specifically disclose use of hook and loop straps.

However, Carter '848 teaches utilization of both hook and loop straps 34 and a "lanyard" 30 attached to a pillow. Therefore, to have provided the inflatable pillow of Stamberger '113 with both hook and loop straps and a "lanyard", thus allowing attachment of the pillow to any given object, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Carter '848.

Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stamberger '113 in view of Tapper '807.

Stamberger '113 discloses, Figs. 1, 3, 5, and 10, an inflatable pillow 10 having "accordion type" side walls 26, 40 with a "cut out" at crease of 26 or 40 or that "cut out" on either side of 11/12 towards 13a. A "lanyard" is at 19. Stamberger '113 does not specifically disclose use of hook and loop straps.

However, Tapper '807 teaches utilization of both hook and loop straps, (col. 6, lines 35-37), and a "lanyard" 9 attached to a pillow. Straps 10 and 11 serve to adjust the height and/or shape of the pillow, col. 7, lines 24-28 and 42-44. Straps 10 and 11 are taught by Tapper as having snap button fasteners, snap buckle fasteners or cam buckles. It is well known that hook and loop fastening means can be used in place of various fastening devices. Therefore, to have provided the inflatable pillow of Stamberger '113 with straps possessing hook and loop fastening means, thus allowing adjustment of height or shape of the Stamberger '113 pillow 10, would have been

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obvious to one having ordinary skill in the art at the time the invention was made as taught by Tapper '807. Stamberger '113 shows a "lanyard" at 19. However, to have provided the inflatable pillow of Stamberger '113 with a "lanyard", thus allowing easy carrying or attachment of the pillow to any given object, would have been a further obvious expedient to one having ordinary skill in the art at the time the invention was made as taught by Tapper '807 as at 9.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



**MICHAEL SAFAVI
PRIMARY EXAMINER
ART UNIT 354**

M. Safavi
August 19, 2005